Tentative Rulings for December 1, 2016
Departments 402, 403, 501, 502, 503

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)

11CECG01702 ***Menefee Construction v. Vulcan Materials Company*** **(Dept. 403)**

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

15CECG03896 ***Robert Chaplain v. BNSF Railway Company, et al.,*** **is continued to Thursday, December 15, 2016, at 3:30 p.m. in Dept. 402.**

14CECG03039 ***Dhillon v. Anheuser-Busch, LLC*** **[Hearing on motion to certify class action is continued to December 15, 2016, at 3:30 p.m. in Dept. 503]**

08CECG04411 ***Becerra v the McClatchy Company, et al.*** **is continued to December 15, 2016 at 3:30 p.m. in Dept. 403**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 402

(24) **Tentative Ruling**

Re: ***Quan v. Champagne***
Court Case No. 16CECG00685

Hearing Date: **December 1, 2016 (Dept. 402)**

Motion: Demurrer of Defendants Larry Champagne and Gateway Auto Sales and Leasing Inc., dba Fresno Auto Dealers Exchange, to First Amended Complaint

Tentative Ruling:

To order the demurrer off calendar as moot given the defendants' have already filed their answer, and the demurrer was not filed *at the same time* as their answer. (Code Civ. Proc. § 430.30, subd. (c).)

Explanation:

Code of Civil Procedure section 430.30, subdivision (c) allows a defendant to "demur and answer *at the same time*." (Code Civ. Proc. § 430.30, subd. (c).) Here, defendants they filed their Answer to the First Amended Complaint on October 11, 2016, but did not file their demurrer until November 1, 2016. This is not in conformity with the statute.

The court realizes that defendants followed a similar procedure with their first demurrer, and the court elected to consider the motion on its merits. However, upon further reflection, the court will not allow this practice to continue. It was not *plaintiff's* duty to provide authority for why this procedure was incorrect, but rather *defendants'* obligation to provide authority allowing them to proceed in such a manner. The court is aware of no such authority, nor did defendants provide any (with either demurrer). The statute is clear on its face: the demurrer and answer may be *filed at the same time*, which has a clear meaning without reference to additional treatise or case: both must be filed on the same day. In construing a statute courts "must look to the statute's words and give them their usual and ordinary meaning. The statute's plain meaning controls the court's interpretation unless its words are ambiguous." (*People v. Robinson* (2010) 47 Cal.4th 1104, 1138.) There is no ambiguity in this language.

Pursuant to California Rules of Court, rule 3.1312 and Code of Civil Procedure section 1019.5(a), no further written order is necessary. The minute order adopting this ruling will serve as the order of the court, and service by the clerk of the minute order will constitute notice of the order.

Tentative Ruling
Issued By: JYH on 11/30/16
(Judge's initials) (Date)

(29)

Tentative Ruling

Re: ***Green Tree Servicing, LLC v. Ismail Ali, et al.***
Superior Court Case No. 14CECG02416

Hearing Date: December 1, 2016 (Dept. 402)

Motion: Default prove-up

Tentative Ruling:

To deny without prejudice. Plaintiff to calendar a new hearing date. (Code Civ. Proc. §§ 585(c), 764.010.) Plaintiff is ordered to submit a new default packet that is in full compliance with Local Rule 2.1.14 and California Rules of Court, rule 3.1800, at least ten court days before the next prove-up hearing.

Explanation:

Plaintiff's default packet is deficient. Specifically, despite this Court's previous two orders, Plaintiff has not dismissed the Doe defendants, or provided a corrected proposed order.

Accordingly, because the Court does not have a current default packet or a properly drafted proposed order, the application is denied without prejudice. Plaintiff is ordered to submit a new and complete default packet, at least ten court days before the next hearing.

Pursuant to California Rules of Court, rule 3.1312, and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JYH on 11/30/16
(Judge's initials) (Date)

(5)

Tentative Ruling

Re: ***American Payroll Outsourcing, Inc. v. National Logistics Team, LLC***
Superior Court Case No. 16 CECG 00525

Hearing Date: December 1 2016 **(Dept. 402)**

Petition: Confirm Arbitration Award

Tentative Ruling:

To deny without prejudice. A Petition to confirm the arbitration **must** be served on the Defendant in the **same manner as a summons**. See CCP § 1290 et seq. There is no proof of service for the Petition filed on November 1, 2016. As for the proof of service filed on August 29, 2016, it is invalid. It indicates that Defendant/Respondent signed a USPS receipt of certified mail. This is **not** the mandatory Judicial Council form No. **POS-015**. The mandatory Judicial Council form must be served on the Defendant/Respondent. It is this Form that must be signed by the Defendant/Respondent and returned. This explains the need for service of a return envelope, postage prepaid, addressed to the sender. [CCP § 415.30(a)] See steps outlined infra.

Explanation:

Law Governing Petition to Confirm

Until an arbitration award is confirmed by court judgment, it has only the effect of a contract between the parties. [CCP § 1287.6] Accordingly, the party seeking confirmation of the award must file and serve a petition to confirm. See CCP § 1285. If a petition or response requesting confirmation is duly filed and served, the court must confirm the award as made, unless it corrects or vacates the award or dismisses the proceeding. [CCP § 1286 and see *Valsan Partners Ltd. Partnership v. Calcor Space Facility* (1994) 25 Cal.App.4th 809, 819 and *Weinberg v. Safeco Ins. Co. of America* (2004) 114 Cal.App.4th 1075, 1084.]

A party may seek confirmation by filing and serving a petition at least 10 days, but no more than 4 years, after service of the award on that party. [CCP §§ 1288 and 1288.4] The petition must name as respondents all parties to the arbitration and may name any other persons bound by the award. [CCP § 1285; see *Walter v. National Indem. Co.* (1970) 3 Cal.App.3d 630, 634.] The petition or response must also set forth the substance of the arbitration agreement or have a copy attached, name the arbitrator, and set forth or have attached a copy of the award and the arbitrators' written opinion, if any. [CCP § 1285.4.] Service and hearing are governed by the same provisions as petitions to compel arbitration. [CCP § 1290 et seq.]

Petition at Bench

First, there is no proof of service for the latest Petition filed on November 1, 2016. Second, as stated in the previous ruling, the Petition to Confirm must be served in the same manner as a summons. [CCP § 1290 et seq.] **As stated in the previous ruling, the proof of service for Petition filed on August 29, 2016 is invalid**. It was served via "mail and acknowledgement of receipt." [CCP § 415.30] As a result, the Defendant/Respondent remains **unserved**.

If Petitioner wishes to use the "mail and acknowledgement of receipt" method, the steps must be carefully followed. It is accomplished by mailing the defendant copies of the summons and complaint (or Petition to Confirm with accompanying documents) along with a request to acknowledge receipt thereof. **The acknowledge receipt is a mandatory Judicial Council Form No. POS-015.**

The following must be mailed to defendant:

- A copy of the summons and complaint;
- *Two* copies of the *notice* and *acknowledgment* form No. POS-015;
- A return envelope, postage prepaid, addressed to the sender. [CCP § 415.30(a)]

(Ordinary, first class mail is sufficient (need not be certified or registered or return-receipt-requested). [CCP § 415.30(a)]

The notice must apprise defendant that unless he or she **signs and returns the acknowledgment** within 20 days, service will be made in some other manner, and defendant held liable for the extra expenses so incurred. The acknowledgment must simply show receipt of a copy of the summons and complaint. [CCP § 415.30(b)] *An official form Notice and Acknowledgment of Receipt* was adopted for **mandatory use** by the Judicial Council in 2005. It is **Form No. POS-015.** Use of the form automatically satisfies the above requirements. [CCP § 415.30(e)] If defendant signs the acknowledgment, it waives further service of process. If defendant *refuses*, some other method of service **must** be utilized (but defendant is liable for the costs incurred). [CCP § 415.30]

Importantly, signing a *postal service return receipt* is *not* an acknowledgment of receipt of summons. [*Tandy Corp. v. Sup.Ct. (Lekoff)* (1981) 117 Cal.App.3d 911, 913—pleadings and acknowledgment form sent by certified mail, return-receipt-requested; the defendant signed the return-receipt, but refused the acknowledgement; no valid service obtained.] **The mandatory Judicial Council form No. POS-015 must be used.**

Pursuant to California Rules of Court, Rule 391(a) and Code of Civil Procedure § 1019.5, subd. (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JYH on 11/30/16
(Judge's initials) (Date)

Tentative Rulings for Department 403

03

Tentative Ruling

Re: ***Leon v. County of Fresno***
Case No. 14 CE CG 00191

Hearing Date: December 1st, 2016 (Dept. 403)

Motion: Defendants' Motion for Summary Judgment, or in the Alternative Summary Adjudication

Tentative Ruling:

To grant the defendants' motion for summary judgment as to the plaintiff's entire complaint as to all defendants. (Code Civ. Proc. § 437c.) Defendants are directed to submit to this court, within 5 days of service of the minute order, a proposed judgment consistent with the court's summary judgment order.

Explanation:

Defendants have met their burden of showing that plaintiff cannot prevail on any of the causes of action alleged in the complaint, as they have submitted evidence that the individual defendants did not use excessive force or deny plaintiff timely medical care during the incident on January 25th, 2013.

To succeed on a claim under 28 U.S.C. section 1983 ("§1983"), a plaintiff must prove "(1) that a person acting under color of state law (2) committed an act that deprived the [plaintiff] of some right, privilege or immunity protected by the Constitution or laws of the United States." (*White v. Roper* (9th Cir. 1990) 901 F.2d 1501, 1502.)

"[A] pretrial detainee must show only that the force purposely or knowingly used against him was objectively unreasonable." (*Kingsley v. Hendrickson* (2015) 135 S.Ct. 2466, 2473.) "A court (judge or jury) cannot apply this standard mechanically. Rather, objective reasonableness turns on the 'facts and circumstances of each particular case.' A court must make this determination from the perspective of a reasonable officer on the scene, including what the officer knew at the time, not with the 20/20 vision of hindsight. A court must also account for the 'legitimate interests that stem from [the government's] need to manage the facility in which the individual is detained,' appropriately deferring to 'policies and practices that in th[e] judgment' of jail officials 'are needed to preserve internal order and discipline and to maintain institutional security.'" (*Ibid*, internal citations omitted.)

A government official or employee may also be held liable for violating the Eighth and Fourteenth Amendments if he or she knew of and disregarded an excessive risk to an inmate's health and safety by neglecting the inmate's serious medical needs

by denying, delaying, or intentionally interfering with medical treatment. (*Lolli v. County of Orange* (9th Cir. 2003) 351 F.3d 410, 419.)

Here, the evidence shows that defendants did not use any excessive force on plaintiff in violation of his Eighth and Fourteenth Amendment rights, nor did they deprive him of timely or adequate medical care for any injuries. According to defendants' declarations, they did not strike, kick, choke, pull hair, or drag plaintiff, or otherwise use any force, much less excessive force, on the plaintiff. Only one officer was even in plaintiff's cell at the time of the incident, and he denies doing anything to plaintiff other than telling him to stop pounding on the door and ordering him to put his hands on the wall. That officer, Officer Burks, is not even a named defendant in the plaintiff's complaint. Two of the other officers who have been named as defendants, Officers Vasquez and Cunha, were either on a different tier of the pod, or not even in the pod at the time of the incident. Thus, there is no evidence to support plaintiff's excessive force claim, and plaintiff himself has not filed any opposition or presented any evidence to raise a dispute issue of material fact as to whether defendants used excessive force against him.

Also, to the extent that plaintiff is alleging that defendants denied him timely medical care for his injuries, defendants not only deny that they injured plaintiff, but also deny knowing that plaintiff had been injured or that they deprived him of timely medical care. Again, plaintiff has not submitted any evidence that he suffered any serious injuries requiring medical care as a result of the incident, or that defendants knowingly failed to provide him with medical care. Thus, defendants are entitled to summary adjudication of the first cause of action for violation of plaintiff's rights under the Eighth and Fourteenth Amendments.

Likewise, defendants are entitled to summary adjudication of the battery cause of action. To establish a battery claim, the plaintiff must establish that: (1) defendant intentionally performed an act that resulted in a harmful or offensive contact with the plaintiff's person; (2) plaintiff did not consent to the contact; and (3) the harmful or offensive contact caused injury, damage, loss or harm to plaintiff. (*Brown v. Ranswiler* (2009) 171 Cal.App.4th 516, 526-527.) Also, where the alleged batterer is a police officer, plaintiff also has the burden of proving "unreasonable force as an element of the tort." (*Edson v. City of Anaheim* (1998) 63 Cal.App.4th 1269, 1272; *Munoz v. City of Union City* (2004) 120 Cal.App.4th 1077, 1102.)

Here, as discussed above, the evidence submitted by defendants shows that they did not strike, kick, choke, or do any other act that would constitute harmful or offensive contact with plaintiff. They also deny having caused any injuries to plaintiff. Plaintiff has not submitted any evidence to rebut defendants' denials, so plaintiff has failed to raise any triable issues of material fact as to the battery claim. Therefore, the defendants are entitled to summary adjudication of the second cause of action for battery.

Similarly, the court intends to grant summary adjudication of the third cause of action for general negligence. In order to prove a cause of action for negligence, a plaintiff must establish that (1) defendant owed a duty to use due care toward plaintiff,

(2) defendant failed to exercise ordinary care and thus breached his duty and (4) caused plaintiff's damages. (*Nally v. Grace Community Church* (1988) 47 Cal.3d 278, 292.)

Also, where the defendant is a public entity, the plaintiff must allege a statutory basis for imposing negligence liability on the defendant. (Govt. Code § 815.) "[S]ection 815 establishes 'the basic rule[ ] that public entities are immune from liability except as provided by statute.' Thus, when it comes to common law tort injuries, [the public entity defendant's] liability can only be predicated on its vicarious liability, if any, for the wrongful acts of its employees, as authorized by section 815.2, subdivision (a)." (*Ross v. San Francisco Bay Area Rapid Transit Dist*. (2007) 146 Cal.App.4th 1507, 1514, internal citations omitted.)

Moreover, courts have held that there is no statutory basis for holding a government entity directly liable for the negligent hiring, training, or supervision of its officers. (*De Villers v. Count of San Diego* (2007) 156 Cal.App.4th 238, 252-253; *Munoz v. City of Union City* (2004) 120 Cal.App.4th 1077, 1110-1115.) "When the employer is a governmental agency, the statutory framework permits the injured party to pursue the vicarious liability theory in accordance with these general common law principles. (Gov. Code, § 815.2.) However, the statutory framework requires, as a condition to the injured party's recovery on a *direct* liability theory against a governmental agency, that the injured party identify a 'specific statute declaring [the entity] to be liable, or at least creating some specific duty of care' by the agency in favor of the injured party." (*De Villers v. County of San Diego, supra,* 156 Cal.App.4th at p. 247, emphasis in original.)

In addition, "Although a public entity may be vicariously liable for the acts and omissions of its employees (Gov. Code, § 815.2), that rule does not apply in the case of injuries to prisoners. Government Code section 844.6 states that with certain statutory exceptions (including Gov. Code, § 845.6, discussed below), 'a public entity is not liable for: [¶] ... [¶] (2) An injury to any prisoner.' This creation of immunity expressly applies only to public entities, not public employees, as the statute states that '[n]othing in this section exonerates a public employee from liability for any injury proximately caused by his negligent or wrongful act or omission.' (Gov. Code, § 844.6, subd. (d).)" (*Lawson v. Superior Court* (2010) 180 Cal.App.4th 1372, 1383.)

Here, plaintiff has alleged his general negligence claim against the County on the ground that it negligently trained, supervised, and instructed the officers who allegedly beat him, and thus caused his injuries. (Complaint, ¶ 25.) However, as discussed above, a government entity is not directly liable for negligently hiring, training or supervising its employees in the absence of a specific statute imposing such liability. (*De Villers v. Count of San Diego* (2007) 156 Cal.App.4th 238, 252-253.) In the present case, plaintiff cites to no such statute in support of his claim.

In any event, to the extent that plaintiff attempts to state a vicarious liability claim against the County based on the acts of its employees in allegedly beating him, plaintiff cannot state such a claim because he was a prisoner at the time of the incident. (Govt. Code § 845.6.)

On the other hand, the plaintiff can state a claim against the officers themselves for their own actions in allegedly beating him and denying him medical care. (Govt. Code § 844.6.) Also, Government Code section 845.6 provides a basis for a claim against either the County or the employees if they denied plaintiff medical care with knowledge that he had an immediate need for such care. "[U]nder Government Code section 845.6, both a public entity and its employees are immune from claims based on injuries to prisoners caused by a failure to provide medical care, except when an employee, acting within the scope of his employment, fails to provide medical care to a prisoner and has reason to know that need for medical care is immediate." (*Lawson v. Superior Court, supra*, 180 Cal.App.4th at pp. 1383–1384.)

In the present case, however, the defendant officers deny that they used any force against plaintiff during the incident, or that they knowingly denied him medical care for any injuries. Plaintiff has not submitted any evidence to rebut this showing, and therefore he has failed to raise a triable issue of material fact as to whether defendants breached their duty of care as to him, or whether they caused him any injury as a result of such a breach. Consequently, the court intends to grant the motion for summary adjudication as to the third cause of action.

Pursuant to CRC 3.1312 and CCP §1019.5(a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KCK on 11/30/16
(Judge's initials) (Date)

(30)

Tentative Ruling

Re: ***Carlos Gonzalez v. Moe Saadeldin***
Case No. 16CECG03032

Hearing Date: Thursday December 1, 2016 (**Dept. 403**)

Motion: Confirm Arbitration Award

Tentative Ruling:

To grant. *Within seven days of service of the minute order, Petitioner must submit a judgment directly to this Court which conforms to the petition to confirm arbitration award, wherein United Auto, Inc. is the only named Respondent.*

Explanation:

Any party to an arbitration in which an award has been made may petition the court to confirm the award. The petition shall name as respondents all parties to the arbitration and may name as respondents any other person bound by the arbitration award. (Code Civ. Proc., §1285.)

A petition shall: (a) set forth the substance or have attached a copy of the agreement to arbitrate unless the petitioner denies the existence of such an agreement; (b) set forth the names of the arbitrators; and (c) set forth or have attached a copy of the award and the written opinion of the arbitrators, if any. (Code Civ. Proc., §1285.4.)

If a petition or response under this chapter is duly served and filed, the court shall confirm the award as made, whether rendered in this state or another state, unless in accordance with this chapter it corrects the award and confirms it as corrected, vacates the award or dismisses the proceeding. (Code Civ. Proc., §1286.)

Here, the petition conforms to the Code of Civil Procedure. First, section 1285.4: (a) the agreement to arbitrate is found at Exhibit 1 of the Sadr Declaration, attached to the Petition; (b) the name of the arbitrator is set out in the petition, i.e. Robert J. Flack. (Pet. p2 ln 14.); and (c) a copy of the original award is found at Exhibit 3 of the Sadr Declaration, attached to the Petition. Second, section 1286: the petition was duly served on October 18, 2016 via U.S. Mail and via email (Notice, filed 10/18/16.); Respondent had 10 days to respond and did not. (Code Civ. Proc., § 1290.6.) Motion granted.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order

adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KCK on 11/30/16
(Judge's initials) (Date)

Tentative Rulings for Department 501

Tentative Rulings for Department 502

Tentative Rulings for Department 503

(17) **Tentative Ruling**

Re: ***Moffett v. Calif. Cancer Associates for Research and Excellence, Inc.***
Court Case No. 14 CECG 01317

Hearing Date: December 1, 2016 (Dept. 503)

Motion: cCare's Motion for Attorney's Fees
cCare's Motion to Tax/Strike Costs
Moffett's Motion for Attorney's Fees
Moffett's & Shaffer's Motion to Tax/Strike Costs

Tentative Ruling:

To grant cCare's Motion for Attorney's Fees in the amount of $1,128,000.30. To grant Moffett's Motion for Attorney's Fees in the amount of $240,454.25. To deny cCare's motion to Tax/Strike Costs. To deny Moffett and Shaffer's motion to Tax/Strike Costs.

Explanation:

cCare's Motion for Attorney's Fees:

1. cCare is the Prevailing Party on the 2012 Employment Contract

"Except as attorney's fees are specifically provided for by statute, the measure and mode of compensation of attorneys and counselors at law is left to the agreement, express or implied, of the parties . . .." (Code Civ. Proc., § 1021.) Code of Civil Procedure section 1033.5 provides, in subdivision (a)(10), that attorney fees are "allowable as costs under Section 1032" when they are "authorized by" either "Contract," "Statute," or "Law."

Here, the Amended Cross-Complaint brought by cCare against Moffett alleged the existence of four contracts: an employment agreement dated January 1, 2008, an employment agreement dated December 31, 2010, an employment agreement dated April 14, 2012 and a Buy-Sell Agreement. However, only the 2012 Agreement and the Buy-Sell Agreement contained attorney's fees clauses. cCare is the prevailing party, and therefore entitled to its fees, on the 2012 Employment Contract and Moffett is the prevailing party, and entitled to his fees, on the Buy-Sell Agreement.

Civil Code section 1717 provides, in relevant part:

> In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce *that contract*, shall be awarded either to one of the parties or to the prevailing party,

> then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs.

(Civ. Code § 1717, subd. (a) (Emphasis added).)

"[T]he party prevailing on the contract shall be the party who recovered a greater relief in the action on *the contract*. The court may also determine that there is no party prevailing on the contract for purposes of this section." (Civ. Code, § 1717, subd. (b).) Where the judgment is a "simple, unqualified win" on the only contract claim, a trial court has no discretion to deny an attorney fee award to that prevailing party under Civil Code section 1717. Thus, a party "whose litigation success is not fairly disputable" can claim attorney fees as a matter of right. (*Hsu v. Abbara* (1995) 9 Cal.4th 863, 876 (*Hsu*).)

Furthermore, it is well established that when an action involves multiple, independent contracts, each of which provides for attorney fees, the "prevailing party" must be determined as to each contract, regardless of who prevailed in the overall action. (*Arntz Contracting Co. v. St. Paul Fire & Marine Ins. Co*. (1996) 47 Cal.App.4th 464, 491; *Hunt v. Fahnestock* (1990) 220 Cal.App.3d 628, 633.)

Here, cCare's success on the 2012 Employment Agreement is not disputable. " '[T]he party who obtains greater relief on the contract action is the prevailing party entitled to attorney fees under section 1717, regardless of whether another party also obtained lesser relief on the contract or greater relief on noncontractual claims.' " (*Douglas E. Barnhart, Inc. v. CMC Fabricators, Inc*. (2012) 211 Cal.App.4th 230, 240; *Frog Creek Partners, LLC v. Vance Brown, Inc*. (2012) 206 Cal.App.4th 515, 531 ["[s]ection 1717 as amended in 1987, makes it clear that the party who obtains greater relief on the contract action is the prevailing party entitled to attorney fees under section 1717, regardless of whether another party also obtained lesser relief on the contract or greater relief on noncontractual claims"].) Moffett sued on the 2012 Employment Agreement in his first cause of action. He prevailed, recovering $525,358 in deferred compensation. cCare sued on the 2012 Employment Agreement in its third cause of action, recovering $954,081.50 in liquidated damages (which were only sought with respect to the 2012 contract), plus the Stanford payment of $75,000 which was made during the term of the 2012 Agreement. (See Scott Decl. Ex. C.) Accordingly, cCare prevailed on the 2012 Agreement by at least half a million dollars.

Moffett argues that cCare did not prevail on the 2012 Agreement for two reasons: the result was mixed due to cCare's failure to recover more than 10% of its litigation objective and because the general verdict renders it impossible to determine what contract cCare actually recovered under. Neither argument has merit.

In circumstances where both parties seek relief on a contract but neither party prevails, the trial court retains discretion to determine that there is no prevailing party under Civil Code section 1717. (*Hsu*, *supra*, 9 Cal.4th at p. 875.) "If neither party achieves a complete victory on all the contract claims, it is within the discretion of the

trial court to determine which party prevailed on the contract or whether, on balance, neither party prevailed sufficiently to justify an award of attorney fees." (*Scott Co. v. Blount, Inc*. (1999) 20 Cal.4th 1103, 1109.) Typically, a determination of no prevailing party results when both parties seek relief, but neither prevails, or when the ostensibly prevailing party receives only a small part of the relief sought. In other words, the judgment is " 'considered good news and bad news as to each of the parties....' " (*Nasser v. Superior Court* (1984) 156 Cal.App.3d 52, 60.) This is not a case where no party prevailed on the 2012 Agreement, rather, Moffett argues, cCare prevailed, just not enough to justify attorney's fees.

The court rejects this argument. Not only did cCare prevail on the sole issue of the 2012 Agreement by over $500,000, it also prevailed in the entire action, obtaining a net recovery. An attorney fees clause in a contract may be broad enough to cover tort as well as contract causes of action. (*Maynard v. BTI Group, Inc*. (2013) 216 Cal.App.4th 984, 991–992; *Childers v. Edwards* (1996) 48 Cal.App.4th 1544, 1549.) Here the relevant clause in the parties' 2012 Agreement states:

> 13.9 Attorney's Fees. In the event of arbitration or litigation between the parties relating to or arising from this Agreement, the prevailing party shall be entitled to receive reasonable attorney's fees, costs, and other expenses, in addition to whatever other relief may be awarded.

(Complaint, Ex. A.)

Courts have held that an attorney's fee provision that provides for fees in any action "arising from" or "relating to" the contract is broad enough to encompass recovery of attorney's fees for tort claims. (*Santisas v. Goodin* (1998) 17 Cal.4th 599, 603 [holding that a provision authorizing fees in any legal action " 'arising out of the execution of the contract' " was broad enough to encompass tort claims]; *Moallem v. Coldwell Banker Com. Group, Inc*. (1994) 25 Cal.App.4th 1827, 1831 [holding that a provision authorizing fees in "any 'legal action ... relating to' the contract" was broad enough to encompass tort claims].)

If the provision is broad enough to cover noncontractual claims, as it is here, the prevailing party entitled to recover fees will normally be the party whose net recovery is greater, in the sense of most accomplishing its litigation objectives, whether or not that party prevailed on a contract cause of action. (*Maynard v. BTI Group, Inc*., *supra*, 216 Cal.App.4th at p. 992.) The thirteen causes of action in the First Amended Cross-Complaint against Moffett sought, overwhelmingly, damages, not injunctive or other relief. Here, cCare obtained a net damage award combining its contract and tort recoveries.

Second, the general verdict does not work against cCare's attorney's fee claim. To the contrary, a "general verdict implies a finding in favor of the prevailing party of every fact essential to the support of his action or defense." (See *Henderson v. Harnischfeger Corp*. (1974) 12 Cal.3d 663, 673; *Wilson v. County of Orange* (2009) 169 Cal.App.4th 1185, 1193 [" 'the jury's general verdict "imports findings in favor of the prevailing party on all material issues; and if the evidence supports implied findings on

any set of issues which will sustain the verdict, it will be assumed that the jury so found" ' "].) This means the general verdict supports findings for cCare on the 2012 Agreement – including that all the damages recovered were related to or arising under the 2012 Agreement.

2. The Fee Award Must Nevertheless be Apportioned

"Where a cause of action based on the contract providing for attorney's fees is joined with other causes of action beyond the contract, the prevailing party may recover attorney's fees under [Civil Code] section 1717, only as they relate to the contract action." (*Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124, 129.) Although, " ' "[a]ttorneys fees need not be apportioned between distinct causes of action where plaintiff's various claims involve a common core of facts or are based on related legal theories." [Citation.]' [Citation.] Nor is '[a]pportionment ... required when the issues in the fee and nonfee claims are so inextricably intertwined that it would be impractical or impossible to separate the attorney's time into compensable and noncompensable units. [Citations.]' " (*Taylor v. Nabors Drilling USA, LP* (2014) 222 Cal.App.4th 1228, 1251.) It remains within the discretion of the trial judge to apportion or allocate attorney's fees to fee bearing and nonfee bearing causes of action if he or she has a rational basis for doing so. (See, e.g., *Amtower v. Photon Dynamics, Inc*. (2008) 158 Cal.App.4th 1582, 1604 ["[w]here fees are authorized for some causes of action in a complaint but not for others, allocation is a matter within the trial court's discretion"]; accord, *Zintel Holdings, LLC v. McLean* (2012) 209 Cal.App.4th 431, 443 ["[a] court may apportion fees even where the issues are connected, related or intertwined"].)

Here, cCare prevailed on three of four contracts, only one of which had an attorney's fees clause. Put another way, only the litigation activities "related to" or "arising out of" the April 14, 2012 Agreement are compensable. Logically, acts occurring before the effective date of the Agreement cannot "relate to" or "arise out of" the 2012 Agreement. Accordingly, litigation activities relating to Moffett's and cCare relationship from January 1, 2008 through April 13, 2012 should not be reimbursed because those activities "related to" or "arose out of" the 2008 and 2010 contracts, which specifically did not include attorney's fees clauses.

The question is how to fairly apportion the case activities. When analyzed by causes of action the 2012 Agreement is one of four causes of action for breach of contract. Of the other nine causes of action, one was directed at Shaffer, two more, conspiracy and aiding and abetting were theories of inclusion, not independent causes of action, thus the remaining six causes of action all related to post April 14, 2012 events in some way. Assuming the sixth, seventh, eighth, ninth, eleventh, and twelfth causes of action were one third related to the 2012 Agreement, that means approximately 23% of the complaint related to the 2012 Agreement.

Looking at the discrete damage claims, most are tied to the 2012 Agreement. The liquidated damages of $954,081.50 related only to 2012. The excess compensation claim based off the RVUs totaled $363,710 and $160,509 was allocated to 2012 and 2013. The Dartmouth expenses of $95,000 were paid during the 2013 Agreement. (See

Scott Decl. Ex. D.) The Stanford $75,000 payment was made during the 2012 Agreement. (Scott Decl. Ex. C.) The parties dispute whether cCare actually argued to the jury that it should be awarded the money set forth in Ms. Unger's report, Exhibit 625. That exhibit listed breach of fiduciary duty damages to cCare of $852,706 for 2010, $1,069,640 in 2011, $905,905 in 2012 and $326,193.56 in 2013. Assuming these were a part of cCare's damage claim, the damages allocated to the time period of the 2012 Agreement totaled approximately $2,516,689 or 54% of the $4,642,363.70 total.

The court has read every entry in the extremely lengthy billing summary provided by cCare's counsel. Vast amounts of time were spent obtaining, reviewing, organizing and analyzing documents in this case. These documents clearly included many, many documents generated during the time periods of the 2008 and 2010 contracts. Based on the court's review of the billing entries, analysis of the allegations of the parties as disclosed in their pleadings, and analysis of the damage claims of cCare, and participation in trial, the court discounts cCare's attorney's fees by 33% to account for the work performed which was outside the scope of the April 14, 2012 Agreement, and therefore not subject to an attorney's fees clause. This is less than the allocation suggested by the damages, because certain housekeeping and general tasks would apply to the litigation in general.

1. Attorney's Fees Awarded

A. The Lodestar

A court assessing attorney's fees begins with a touchstone or lodestar figure, based on the 'careful compilation of the time spent and reasonable hourly compensation of each attorney . . . involved in the presentation of the case." (*Serrano v. Priest* (*Serrano III*) (1977) 20 Cal.3d 25, 48.) Here, defendant seeks a loadstar of $242,272.75. As our Supreme Court has repeatedly made clear, the lodestar consists of "the number of hours *reasonably expended* multiplied by the *reasonable* hourly rate. . . ." (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095, italics added; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1134.) The California Supreme Court has noted that anchoring the calculation of attorney fees to the lodestar adjustment method '"is the only way of approaching the problem that can claim objectivity, a claim which is obviously vital to the prestige of the bar and the courts.' " (*Serrano III*, *supra*, 20 Cal.3d at p. 48, fn. 23.)

i. *Number of Hours Reasonably Expended*

While the fee awards should be fully compensatory, the trial court's role is not to simply rubber stamp the defendant's request. (*Ketchum v. Moses*, *supra*, 24 Cal.4th at p. 1133; *Robertson v. Rodriguez* (1995) 36 Cal.App.4th 347, 361.) Rather, the court must ascertain whether the amount sought is reasonable. (*Robertson v. Rodriguez*, *supra*, 36 Cal.App.4th at p. 361.) However, while an attorney fee award should ordinarily include compensation for all hours reasonably spent, inefficient or duplicative efforts will not be compensated. (*Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1321.) The person seeking an award of attorney's fees "is not necessarily entitled to compensation for the value of attorney services according to [his] own notion or to the

full extent claimed by [him]. [Citations.]" (*Salton Bay Marina, Inc. v. Imperial Irrigation Dist*. (1985) 172 Cal.App.3d 914, 950.)

"Counsel for the prevailing party should make a good-faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary … " (*Hensley v. Eckerhart*, *supra*, 461 U.S. at p. 434, citing *Copeland v. Marshall* (1980) 641 F.2d 880, 891 (en banc).)

With that in mind the following deductions are warranted:

Clerical

"[P]urely clerical or secretarial tasks should not be billed …, regardless of who performs them." (*Missouri v. Jenkins* (1989) 491 U.S. 274, 288.) Routine phone calls such as setting up CourtCall appearances and confirming hotel rooms, coordinating filing and service of court documents, and placing documents in chronological order do not take legal skills. Neither does photocopying documents, printing documents, performing quality control on documents or gathering exhibits where no discretion is used to select those documents, such as when the documents are from a list. (See, for example 6/24/15 entry by timekeeper PK "Perform quality control check of exhibits for binders 1 & 3;" 6/25/15 PK "pack for shipment;" 9/2/15 JND "coordinate filing and service.") I have identified 34 time entries totaling 1.6 hours by timekeeper MMS, 1.6 hours by timekeeper JND, .5 and 40.1 hours by timekeeper PK that are devoted to clerical tasks. This results in a deduction of $9,572.

Shaffer/cCare MSO

Although cCare's counsel made an effort to remove all billing entries related to Ms. Shaffer and her litigation with the cCare MSO, some entries persisted, usually in the block billed time entries. The court identified 23 entries relating to either Shaffer's or cCare MSO's role as a litigant. (See, for example, time entries dated: 12/23/15 by timekeeper LT "Strategize re: answer or demurrer to Shaffer's cross-complaint …;" 3/11/15 by time keeper JND "revise MSO discovery responses;" 4/14/15 by timekeeper JND "draft cCare MSO supplemental responses to interrogatories;" 5/15/15 by timekeeper MMS "strategize re: Maria Shaffer cross-action & summary judgment;" 10/6/15 by timekeeper MMS "review emails re continuance of MSO motion for summary judgment.") Where entries were block billed, the court estimated a reasonable time for each, based on it's experience and the overall patterns of counsel's billing practices. This results in a deduction of 3.7 hours of time for timekeeper LT, 4.3 hours for timekeeper MMS and 6.3 hours for timekeeper JND, for a total deduction of $6,067.50.

Insurance Issues

In reviewing the billing, it appeared that cCare explored tendering its defense to an insurance company. This attempt has nothing to do with the issues litigated between cCare and Moffett. The court identified ten entries that referenced the issue of insurance. (See entries dated: 12/9/14 LT; 1/15/15 MMS; 2/5/15 MMS; 2/10/15 MMS; 3/4/15 MMS 3/6/15 MMS; 4/2/15 MMS; 5/15/15 MMS; 5/27/15 MMS and 8/18/15 MMS.)

The Court estimates that timekeeper LT spent .4 hours on the insurance issue and timekeeper MMS spent at least 5.6 hours on the insurance issue for a total deduction of $2,750.

Excessive Redaction

Some billing entries are redacted to the point the relevancy of the task cannot be identified. (See for example, 1/9/15 by timekeeper LT "research ___;" 3/9/15 by timekeeper LT "Strategize re: ____;" and 10/29/15 by timekeeper LT "research ___.") This frustrates the court's ability to determine whether the time spent on a particular task was reasonable. While it may be appropriate to redact billing statements to protect the attorney-client privilege (See *Banning v. Newdow* (2004) 119 Cal.App.4th 438, 454; *Concepcion v. Amscan Holdings, Inc*. (2014) 223 Cal.App.4th 1309, 1327), it remains the burden of the party seeking attorney fees to prove that the fees it seeks are reasonable. (*Gorman v. Tassajara Development Corp*. (2009) 178 Cal.App.4th 44, 98.) If the redaction is too aggressive, the court cannot perform its gatekeeping task of determining a reasonable fee. Consequently, the court deducts the sum of $427.50 for excessive redaction.

2. *Reasonable Hourly Compensation*

Reasonable hourly compensation is the "hourly prevailing rate for private attorneys in the community conducting noncontingent litigation of the same type" (*Ketchum v. Moses*, *supra*, 24 Cal.4th at p. 1133.) Ordinarily, '"the value of an attorney's time . . . is reflected in his normal billing rate."' (*Mandel v. Lackner* (1979) 92 Cal. App. 3d 747, 761.)

The rates charged by the Buchalter Nemer attorneys: Joanne N. Davies, $495 per hour for an attorney with 15 years' experience, most in complex litigation; Mark M. Scott, $475.00 per hour for a 25 year attorney; and Louise Troung, $245 per hour for a 1 year attorney, are all high for Fresno, but reasonable for Southern California.

"[I]n the 'unusual circumstance' that local counsel is unavailable," a trial court may award an out-of-town counsel's higher rates. (*Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 399.) In such rare cases, the justification for awarding the higher rate is that out-of-town rates are needed "to attract attorneys who are sufficient to the cause." (*Ibid*.) At a minimum, therefore, the party seeking out-of-town rates is required to make a "sufficient showing ... that hiring local counsel was impracticable," and the exception is accordingly inapplicable where "no effort was made to retain local counsel." (*Nichols v. City of Taft* (2007) 155 Cal.App.4th 1233, 1244.)

First, Moffett makes no objection to counsel's rates. Second, cCare has shown that some prominent firms were conflicted out of this litigation, including Fishman, Larsen, Goldring & Zeitler and Dowling Aaron. This is sufficient to show that hiring local counsel was impracticable. Buchalter Nemer's rates are reasonable for this litigation.
Accordingly, attorney's fees of $1,128,000.30 will be awarded ($1,727,908.50 - $9,572 - $6,067.50 - $2,750 - $427.50 = $1,709,091.50 * .66 = $1,128,000.30.)

Moffett's Motion for Attorney's Fees:

1. Moffett is the Prevailing Party on the Buy-Sell Agreement

Both cCare and Moffett sued on the Buy-Sell Agreement. cCare in its fourth cause of action of its First Amended Cross-Complaint and Moffett in his second cause of action in his Complaint. Moffett prevailed on this contract, receiving an award of $523,625 for the value of his shares in cCare. (Civ. Code, § 1717, subd. (b); *Hsu*, *supra*, 9 Cal.4th at p. 876; *Arntz Contracting Co. v. St. Paul Fire & Marine Ins. Co*., *supra*, 47 Cal.App.4th at. p. 491.) cCare recognizes that Moffett is entitled to a fee award as the prevailing party on this contract, however, it claims that the fee award should be lower, characterizing this issue as minor when compared to the scope of the entire litigation.

2. Apportionment

cCare suggests an apportionment by looking at the number of discovery requests by Moffett that dealt with the share valuation issue: 33 of 354 discovery vehicles, interrogatories, requests for production, subpoenas, and deposition categories were related to share valuation. Alternatively, cCare suggests an apportionment by looking at the number of causes of action cCare prevailed on: 17 as compared to the cause of action Moffett prevailed one: one. cCare argues that the value of the shares was a legal issue which the court resolved on directed verdict based on expert reports and testimony.

However, Moffett argues that cCare also propounded 44 discovery requests specifically citing the Buy-Sell Agreement, meaning some 22% of the discovery related in some way to the Buy-Sell Agreement. The Buy-Sell Agreement contained a non-competition clause at paragraph 3.1, and according to Moffett, significant discovery was performed regarding the covenant not to compete because cCare alleged that Moffett was not entitled to anything under the Buy-Sell Agreement because he violated the covenant not to compete. Moffett, in turn, contended he was constructively discharged, so that the covenant not to compete never came into effect.

Finally, Moffett explains that the fee request of $242,272.75 is only 32% of the total fees billed to Moffett in this case.

Moffett makes a compelling argument for the expansive nature of the discovery and litigation devoted to the Buy-Sell Agreement. It was not an issue that could be viewed in isolation as a mere mathematical calculation. Both parties raised defenses and counter-defenses. The court therefore accepts Moffett's initial apportionment of apportionment of 32% of the fees billed as reasonable.

3. Attorney's Fees Awarded

a. The Lodestar

Here, defendant seeks a loadstar of $242,272.75.

i. Number of Hours Reasonably Expended

"Counsel for the prevailing party should make a good-faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary … " (*Hensley v. Eckerhart*, *supra*, 461 U.S. at p. 434, citing *Copeland v. Marshall* (1980) 641 F.2d 880, 891 (en banc).)

With that in mind, the following deductions are warranted:

Clerical

"[P]urely clerical or secretarial tasks should not be billed …, regardless of who performs them." (*Missouri v. Jenkins*, *supra*, 491 U.S. at p. 288.) Here, the entry dated 5/8/14 by time keeper CLD is for "attention to filing and service of complaint" for .3 hours at an hourly rate of $315. This is a clerical task. Also the entry of 11/17/14 by timekeeper CLD for "multiple communications with counsel regarding scheduling of depositions" for .2 hours at an hourly rate of $315 represents clerical work. A deduction of $157.50 should be taken.

Shaffer

Not all entries relating to the representation of Maria Shaffer were redacted. I counted six relating to her, typically in block billed entries. Reasonable deductions were made to subtract out this time. See entries dated 9/2/14 time keeper CLD "review materials served on Ms. Shaffer;" 10/23/14 timekeeper CLD "outline responses to interrogatories propounded by Shaffer;" 10/28/14 by timekeeper CLD "finalize summary of cCare's response to special interrogatories of Shaffer;" 12/9/14 by timekeeper TRS "Meeting with Dr. Moffett and Maria Shaffer;" 9/22/15 by timekeeper CLD "review questions from Maria re status report and preparation of response;" and 10/30/15 by timekeeper CLD "preparation of supplemental responses to [discovery] propounded by cCare to each of Moffett and Shaffer." A deduction of $937 should be taken.

Indemnity

Some of the billing entries relate to pursuing indemnification from the cCare MSO. These are not related to the Buy-Sell Agreement, and should be deducted. (See entries dated 9/4/14 by timekeeper CTS; entry dated 9/11/14 by timekeeper CLD; and entry dated 9/11/14 by timekeeper CTS.) A total deduction of $724.50 is warranted.

ii. *Reasonable Hourly Compensation*

The rates charged by the members of the Doerkson Taylor firm are reasonable for the area and the experience of the timekeepers.

Attorney's fees of $240,454.25 will be awarded.

Cross-Defendants Moffett's and Shaffer's Motion to Tax Costs:

Cross-defendants Moffett and Shaffer move the court for an order apportioning costs pro rata between them based on the amount of the respective judgment against each defendant. Furthermore, they move to tax various items of cCare's costs.

Allowable Costs Generally

Items of allowable costs are set forth in Code of Civil Procedure section 1033.5, subdivision (a), and disallowed costs are set forth in subdivision (b). Items not expressly mentioned in the statute "upon application may be allowed or denied in the court's discretion." (Code Civ. Proc. § 1033.5, subd. (c)(4).) All allowable costs must be reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation, and they must be reasonable in amount and actually incurred. (Code Civ. Proc. § 1033.5, subd. (c)(1), (2) and (3).)

On motion to tax costs, the initial burden depends on the nature of the costs that are being challenged.

> [T]he mere filing of a motion to tax costs *may* be a "proper objection" to an item, the necessity of which appears doubtful, or which does not appear to be proper on its face. However, if the items appear to be proper charges, the verified memorandum is prima facie evidence that the costs, expenses and services therein listed were necessarily incurred by the defendant, and the burden of showing that an item is not is properly chargeable is upon the objecting party.

(*Nelson v. Anderson* (1999) 72 Cal.App.4th 111, 131 (*Nelson*).)
In order to meet this burden, where the objections are based on factual matters, the motion should be supported by a declaration. (*County of Kern v. Ginn* (1983) 146 Cal.App.3d 1107, 1113-4.)

Item 4 – The Costs of Videotaping Certain Depositions

Cross-defendants take issue with cCare's decision to videotape the depositions of Chris Cheney, Michael Kerr, Kristin Milutinovich, Patrick Rafferty, Bette Stanford, Rachel Ward, Robert Ward, and Scott Wells because they were third party witnesses and "if the video was not used at trial, it was not reasonably necessary to the litigation and should not be recoverable as such." While all allowable costs must be reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation, depositions are a discovery device. One does not know when one is taking a deposition whether that witness will testify at trial. Defendants do not contend that these third party witnesses did not testify at trial. The majority of them did (Michael Kerr, Kristin Milutinovich, Bette Stanford, Rachael Ward, and Scott Wells.) Counsel made the reasonable decision to have the depositions recorded to have impeachment material available on video. With today's juries, used to video streaming and video on demand, an attorney could reasonably concluded that reading long passages from a deposition could put him or her at a disadvantage and could legitimately opt for video

recording witnesses reasonably expected to testify at trial.[1] The fact that the video deposition was never used at trial is of no moment. Unlike photocopies of exhibits, depositions are not required to be "reasonably helpful to aid the trier of fact." (See Code Civ. Proc., § 1033.5, subd. (a).) The court will allow the costs of videotaping the challenged depositions.

Item 4 – Meals for Traveling Attorneys

Citing *Ladas v. California State Auto. Assn*. (1993) 19 Cal.App.4th 761, defendants argue that meals eaten by attorneys cannot be " 'necessary to conduct the litigation' since attorneys have to eat, whether they are conducting litigation or not." (*Id*. at p. 774.) *Ladas* however, emphasized it involved meals eaten at local depositions, not out of town depositions, where counsel cannot cook for him or herself, nor feasibly bring his or her own food and the cost of food is therefore higher. While costs for meals are not specifically enumerated as allowable costs in section 1033.5, subdivision (a), neither are they prohibited in subdivision (b). Thus, costs for meals while traveling may be recoverable in the trial court's discretion if "reasonably necessary to the conduct of the litigation." (§ 1033.5, subd. (c)(2).) Here, the costs are reasonable in amount and reasonably necessary to the conduct of the out of town depositions. (See *Gorman v. Tassajara Development Corp*. (2009) 178 Cal.App.4th 44, 72.) They will be allowed.

Item 13 – Trial Technician and Equipment Rental Fees

Defendants argue that because cCare was represented at trial be two attorneys and a paralegal, any one of those people could have operated the iPad, software and projector used and having a technician was "outside the bounds of reason." This is merely theory, unsupported by evidence. The declaration of Joanne N. Davies establishes that the technician was responsible for preparing presentations used at trial, managing the synchronization and display of 28 deposition transcripts and videos. (Davies Decl. ¶6.) Furthermore, both parties enjoyed the use of cCare's trial technology and technician, both by using individual monitors at counsel table and by using the assistance of the technician directly. (Davies Decl. ¶ 5.)

Allowable costs include"[m]odels and blowups of exhibits and photocopies of exhibits" if they were "reasonably helpful to aid the trier of fact." (Code of Civ. Proc. § 1033.5(a)(12).) Additionally, expenses for computerized forms of exhibits, such as imaged documents and video and graphic exhibits, are recoverable. In *American Airlines, Inc. v. Sheppard, Mullin, Richter & Hampton* (2002) 96 Cal.App.4th 1017, the court rejected the defendants' argument that the trial court abused its discretion by allowing $19,307.33 for imaging documents and deposition transcripts and for display equipment rental. (*Id*. at p. 1057.) The court explained that "[w]hile admittedly 'high-tech,' the methods defendants used to display documents to the jury were specifically

[1] Defendants have introduced no evidence that any of the witnesses they complain were improperly videotaped were peripheral to the case and not expected to be called at trial when deposed.

approved by the trial court, which found them to be highly effective, efficient, and commensurate with the nature of the case." (*Ibid*.)

This court agrees with *American Airlines, Inc*. court. This case involved voluminous exhibits, a high damage exposure, and the technology was reasonably helpful to the court and the trier of fact. The cross-defendants have not shown that the technician was not a reasonable part of the technology package.

Item 13 – Messenger Fees

Courier costs are not expressly authorized by statute, but may be allowed in the discretion of the court. (*Ladas v. California State Auto. Assn*., *supra*, 19 Cal.App.4th at p. 776; § 1033.5, subd. (a)(4).) Here, the majority of the contested costs involve deliveries of documents to cross-defendants counsel. The remainder were required by law to be personally served on the third party witnesses. All charges involved service of documents which either had to be served on a strict deadline or were documents whose manner of service effected the deadline for response. Under these circumstances the fees are necessary and reasonable and not merely incurred for convenience.

Apportionment

Cross-defendants ask this court to apportion cCare costs between them under Code of Civil Procedure section 1032. That section provides, in relevant part:

> "Prevailing party" includes the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant. When any party recovers other than monetary relief and in situations other than as specified, the "prevailing party" shall be as determined by the court, and under those circumstances, the court, in its discretion, may allow costs or not and, if allowed may apportion costs between the parties on the same or adverse sides pursuant to rules adopted under Section 1034.

(Code Civ. Proc., § 1032, subd. (a)(4).)

Section 1032 does not grant this court authority to apportion costs. cCare has a net monetary recovery as against both Moffett and Shaffer. No party recovered other than monetary relief and this is not one of the situations other than those listed in the statute.

Nor are the cases cited by cross-defendants apposite. *Smith v. Circle P Ranch Co*. (1978) 87 Cal.App.3d 267, 272 and *Fennessy v. DeLeuw-Cather Corp*. (1990) 218 Cal.App.3d 1192, 1196 are unity of interest cases. Cross-defendant's reliance on *Slavin v. Fink* (1994) 25 Cal.App.4th 722 is similarly misplaced, in that it also involves the apportionment of costs between prevailing and nonprevailing coparties. In *Slavin*, a

contractor sued a homeowner and her agent for recovery of construction costs. (*Id*. at p. 724.) The homeowner lost, but the agent prevailed. (*Ibid*.) The agent sought costs, which benefited the homeowner. (*Ibid*.) The trial court awarded the agent only a small percentage of the costs he sought. (*Id*. at pp. 724-725.) The apportionment was affirmed on appeal as a matter well within the trial court's discretion. (*Id*. at p. 726.) Here, there is no concern that cCare is claiming costs that were incurred by a nonprevailing coparty.

In allocating costs between jointly represented parties, however, the trial court may not make an across-the-board reduction based on the number of jointly represented parties because such an allocation fails to consider the necessity or reasonableness of the costs as required by section 1033.5, subdivision (c). (*Nelson*, *supra*, 72 Cal.App.4th at p. 130.) Instead, when allocating costs between jointly represented parties, the court must examine the reason each cost was incurred, whether the cost was reasonably necessary to the conduct of the litigation on behalf of the prevailing party, and the reasonableness of the cost. (*Ibid*.; *Charton v. Harkey* (2016) 247 Cal.App.4th 730, 745 [court must "distinguish between costs incurred as a result of the actions or tactics of [the prevailing jointly represented party] as opposed to [the nonprevailing jointly represented party]".)

Cross-defendants admit "it may be impossible to make [an] apportionment [of the costs] on an item-by-item basis." Instead of combing through the thousands of items in cCare's memorandum of costs, cross-defendants propose apportioning costs pares on either a percentage of the judgment awarded against each cross-defendant or on the overall judgment on the complaint and cross-complaint. However, this seems to run afoul of *Nelson*'s instruction to consider "the reason the costs were incurred" and "to distinguish between costs incurred as a result of the actions or tactics of one [party] as opposed to another." (*Nelson*, *supra*, 72 Cal.App.4th at p. 130.) The court will not apportion costs.

cCare's Motion to Strike/Tax Costs:

Prevailing Party:

cCare points out that for cost awards under Code of Civil Procedure section 1033.5, subdivision (a)(4), there should only be a single prevailing party, and where each party has competing monetary claims, the prevailing party for costs is the one with the net amount.

As the court in *Michell v. Olick* (1996) 49 Cal.App.4th 1194, explained: "If the parties had competing claims for damages, then the party with a net judgment in his favor was the sole party entitled to costs. [Citations.] But even without competing monetary claims, a plaintiff who received only partial recovery was still found to be the sole successful party entitled to costs. The defendant was not entitled to any setoff for his partial victory. [Citations.]" (*Id*. at pp. 1198-1199.) Accordingly, this court erred in awarding costs to both Moffett and cCare on their Complaint and Ampended Cross-Complaint, respectively.

However, even in acknowledging this error, this court cannot merely refuse to award costs, which are now memorialized as an element of the judgment.

Specific Costs

1. Deposition Transcripts

cCare contends that only the depositions of Brandy Ungar and Carol Boone were related to the claims Moffett prevailed on. The other 33 itemized deposition costs, cCare contends, should be taxed as relating only to cCare's contentions. However, Moffett has shown that his claim for deferred compensation was subject to cCare's defense that he had breached the April 14, 2012 Agreement by, among other things, failing to provide 12 months' notice of his termination, failing to provide 12 months of services after his notice, falsifying RVUs, making in appropriate personal charges on cCare's credit cards, and failing to return cCare's personal property. (Stoke Decl. Ex. C.) Accordingly, the scope of the litigation on Moffett's side of the equation was much broader than cCare admits. Moffett demonstrates that each of the 33 depositions was of a person identified cCare in response to discovery calling for witnesses to Moffett's breach of the 2012 Agreement. (Opposition at 4:4-5:26.) cCare counters that Moffett simply did not need to defend its claims that he breached the 2012 Agreement to prevail on deferred compensation claim, because he prevailed on his motion for directed verdict on a legal theory, the unenforceability of the restrictive covenant. Thus, the success of Moffett's deferred compensation claim needed little to no discovery or time at trial.

While Moffett may have prevailed at trial on his deferred compensation claim on a legal theory, his chance of success on this gambit was by no means certain. Moreover, he was prudent to work up the case as though he would have to try all of cCare's factual defenses. The depositions were "reasonably necessary."
The court will not tax the deposition costs.

2. Service of Process

cCare seeks to tax $318.50 in service of process costs to James Butterworth and Ingenious Arts. Both witnesses had to do with cCare's claims of conversion of personal property in violation of the 2012 Agreement. The costs were therefore reasonably necessary to the litigation. No objection is made to the amount of the costs. They will not be taxed.

3. Court Reporter Appearance Fees

cCare would tax $1,645 in court reporter fees as unrelated to the presentation or defense of the claims that Moffett prevailed on. cCare fails to explain how it calculated this number, by days or dollars. As cCare has failed to suggest a rational apportionment of fees, the court will decline to tax any of the court reporter fees.

4. Mediation and Discovery Referee Fees

cCare contends that Moffett fails to meet his burden of proving that the mediation and discovery referee were reasonably necessary for the prosecution of his case. This is not his burden until cCare makes a proper objection. cCare has not made a proper objection regarding the mediation, which concerned the case globally. As such, the court will not tax any of the mediation fees.

With respect to the discovery referee fees, Moffett argues persuasively that many of the discovery motions related to Santé Health Foundation which concerned whether Moffett had breached the 2012 Agreement, which was related to Moffett's deferred compensation claim. Accordingly, the discovery referee fees should not be taxed for the same reason the depositions should not be taxed.

Pursuant to California Rules of Court, rule 3.1312(a) and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: A.M. Simpson on 11/21/16
(Judge's initials) (Date)

(28) **Tentative Ruling**

Re: ***Phillips v. The Bank of New York Mellon f/k/a The Bank of New York***

Case No. 16CECG00929

Hearing Date: December 1, 2016 (Dept. 503)

Motion: By Defendants demurring to the Second Amended Complaint.
By Defendants to expunge notices of pendency of action.

Tentative Ruling:

The demurrer is taken off calendar. Parties are ordered to comply with and confer in accordance with California Code of Civil Procedure section 430.41, subdivision (a). If necessary, Defendant may calendar a new date for the demurrer and file the required declaration with notice of the new hearing date.

The motion to expunge the notices of pendency of action in the "prior cases" is denied without prejudice to bringing them in those proper cases.

The motion to expunge the notice of pendency of action in the present case is granted. Attorney's fees are awarded in the amount of $3,500.00 pursuant to Code of Civil Procedure §405.38.

Explanation:

Demurrer

On January 1, 2016, California Code of Civil Procedure section 430.41 went into effect. Subdivision (a) of that section states, in pertinent part:

> Before filing a demurrer pursuant to this chapter, the demurring party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer.

Section 430.41, subdivision (a)(3) requires the demurring party to serve and file *with the demurrer* "a declaration" stating "either of the following:

> (A) The means by which the demurring party met and conferred with the party who filed the pleading subject to demurrer, and that the parties did not reach an agreement resolving the objections raised in the demurrer.

(B) That the party who filed the pleading subject to demurrer failed to respond to the meet and confer request of the demurring party or otherwise failed to meet and confer in good faith."

This demurrer was filed on October 4, 2016. Although there is a reference in the Notice of Demurrer that the parties met and conferred, Defendant has not filed the legally required declaration with the demurrer that shows that the parties complied with Section 430.41. Therefore, the hearing on the demurrer is ordered off calendar, and the parties ordered to meet and confer in accordance with Code of Civil Procedure section 430.41, subdivision (a). If necessary, Defendant may calendar a new date for his demurrer.

Motion to Expunge Notices of Pendency of Actions in Prior Actions

Defendants seek to expunge Notices of Pendency of Actions filed in two previous actions: *Philips v. America's Wholesale Lenders, et al.* Case No. 14CECG1597 ("*Philips I*"), Notice filed on June 30, 2014, and *Philips v. The Bank of New York Mellon f/k/a The Bank of New York,* Case no. 16CECG00416, Notice filed on March 16, 2016.

Defendants point to no authority for the proposition that a Motion can be filed in one case to expunge a Notice of Pendency of Action entered pursuant to another. Indeed, the statute requires the motion to be brought in the "court where the action is pending." (Code of Civ. Proc. §405.30.) Therefore, the motion to expunge the notices of pendency of action is denied without prejudice.

Notice of Pendency of Action in Present Case

Motion to Expunge Notice of Pendency of Action in Current Case.

A Notice of Pendency of Action was filed in this case on April 28, 2016.

Code of Civil Procedure §405.30, *et seq.* provides the procedure by which a party may expunge a notice of pendency of action (or lis pendens) at the preliminary stage of a case. (*See, e.g., Shah v. McMahon* (2007) 148 Cal.4th 526, 529.) In order to maintain the lis pendens, a plaintiff must produce evidence that proves a probable validity of a real property claim. (Code Civ.Proc. §§405.30, 405.32.) In order to show the probable validity of a real property claim, a plaintiff must make a showing that they are likely to succeed on the merits. (*Amalgamated Bank v. Superior Court* (2007) 149 Cal.App.4th 1003, 1012.)

In opposition to the motion, Plaintiff largely repeats the arguments contained in the opposition to the demurrer. By this, Plaintiff misapprehends the burden on him; he must produce actual evidence supporting his claim, not just legal arguments. Because he has the burden of production, and because he has produced no evidence, and has not indicated he will produce any evidence at oral argument, the motion is granted.

Attorney's fees are required to be rewarded to the prevailing party on a motion to expunge unless the Court finds the other party acted with substantial justification or other circumstances make the imposition of attorney's fees unjust. (Code Civ.Proc. §405.38.) No such mitigating circumstances appear here.

The hours charged and the hourly rate appear to be reasonable. Therefore, the Court grants the $3,500 in attorney's fees requested.

Pursuant to California Rules of Court, rule 3.1312, subdivision (a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: A.M. Simpson on 11/30/16
(Judge's initials) (Date)

(17) **Tentative Ruling**

Re: ***First Choice Medical Group, LLC v. Santé Community Physicians IPA Medical Corporation***
Court Case No. 13 CECG 03308

Hearing Date: December 1, 2016 (Dept. 503)

Motion: Santé's Motion to Quash Deposition Subpoena
Third Party Fresno Community Hospital Medical Center's Joinder

Tentative Ruling:

To grant.

Explanation:

Code of Civil procedure section 1987.1 authorizes the court to make an order "quashing the subpoena entirely, modifying it, or directing compliance with it upon such terms or conditions as the court shall declare, including protective orders." In addition, "the court may make any other order as may be appropriate to protect the person [subject to the subpoena] from unreasonable or oppressive demands, including unreasonable violations of the right of privacy of the person." (*Ibid*.)

I. The Subpoena is Overbroad

St. Agnes has requested six categories of documents related to *Moffett*, an entirely different case, including documents "produced by" Santé, SHS and CMC, as well as documents "related to" the deposition of any witnesses for Santé', SHS and/or CMC. Santé, SHS and CMC were third party witnesses in the *Moffett* litigation and CMC and SHS are not named parties in the instant lawsuit.

"A deposition subpoena that commands only the production of business records for copying shall designate the business records to be produced either by specifically describing each individual item or by reasonably particularizing each category of item." (Code Civ. Proc. § 2020.410(a).) Demands for the production of records "must be reasonable and must be direct and specific in their terms and not couched in general terms, and that the relevancy and materiality of the documents requested must be made to appear." (*People v. Keith Railway Equip. Co*. (1945) 70 Cal.App.2d 339, 361.) Categories 4, 5 and 6 of the subpoena are rendered overbroad by the use of the term "related to." For example, but without limitation, this implicates attorney notes, internal memos, summaries, expert review documents relying on the depositions, and a host of other work product. This is reason enough to quash the subpoena as to these categories.

Nor can the problem be fixed by reference to St. Agnes' instructions to provide a privilege log. The statutes providing for a subpoena (Code Civ. Proc., §§ 1985, 1985.3,

1985.5, 2020.010 et seq.) do not require a privilege log by the responding party. The statutes providing for requests for production to a party do. (Code Civ. Proc., § 2031.010 et seq.)

2. The Subpoena Seeks Irrelevant Material

Santé claims the subpoena is entirely irrelevant to the action. Some of the material sought is irrelevant. Though relevancy is broad, it is not unlimited. (Code Civ. Proc., § 2017.010 ["Unless otherwise limited by order of the court ... any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved ... if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence."].) "[T]he court *shall restrict* the frequency or extent of use of a discovery method" if it determines either of the following: (1) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive." (Code Civ. Proc., § 2019.030 (Emphasis added.)) "For discovery purposes, information is relevant if it 'might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement....' " (*Gonzalez v. Superior Court* (1995) 33 Cal.App.4th 1539, 1546, italics omitted.)

St. Agnes argues that the *Moffett* case is relevant to St Agnes' allegations that Santé engaged in unfair competition, and that Santé has engaged in conduct designed to prevent the formation of, and harm, competing physician groups. St. Agnes contends that the *Moffett* action also involves allegations of unfair competition and unfair conduct by Santé that was designed to incentivize physicians to either join Santé or remain with Santé, to the detriment of a competing physician group. St. Agnes contends that the *Moffett* discovery is relevant because, the testimony and exhibits filed with the court in the *Moffett* matter indicate that Dr. Moffett received 1 or 1.2 million in grant money from Santé in approximately August 2013 to assist Dr. Moffett in opening his own oncology practice. Also, several e-mails and text messages discuss Santé's efforts to acquire a physician [presumably Dr. Moffett] at the expense of a potential competitor around July 2013 through December 2013, which directly overlaps with the timing of Santé's conduct and practices at issue in this action. "Accordingly, the subpoenaed documents serve to demonstrate the full scope of Santé's unlawful conduct during this period, and are clearly relevant to the issues in this lawsuit."

This court was the trial court in the *Moffett* matter and is intimately familiar with the testimony and discovery. The discovery and testimony was targeted at Moffett's breach of his fiduciary duties and breach of contract in pursuing and obtaining the business opportunity from Santé for himself, not at Santé's motives or Santé's "limiting competition." It would be of tangential relevancy at best. Moreover, to the extent St. Agnes believes the *Moffett* discovery might lead to relevant evidence, St. Agnes already has enough information to conduct its own discovery from the relevant entities directly through PMQ depositions instead of seeking the discovery from a law firm bound by a protective order preventing it from producing the documents and requiring it to destroy them. Thus, I would find that the subpoenaed documents are obtainable from some other source that is more convenient and less burdensome.

3. Doerksen is Not the Custodian of the Business Records Sought

"Business records' means an item, collection, or grouping of information about a business entity." (*Urban Pacific Equities Corp. v. Superior Court* (1997) 59 Cal.App.4th 688, 693 [holding business records subpoena could not be used to obtain deposition transcript from court reporter because it was court's reporter's product and not a record of its business].) In *Cooley v. Superior Court* (2006) 140 Cal.App.4th 1039, the court held personal injury plaintiff could not enforce a subpoena seeking documents generated by other entities, including police report, possessed by the nonparty District Attorney, as the District Attorney's Office was not a "custodian" of the "business records" sought. (*Id*. at 1043-44.) The *Cooley* court found that the District Attorney's assertion that it did not prepare or generate any of the documents covered by the subpoena was uncontested. "Thus, even before the 1996 amendment's addition of subdivision (a)(4) and (5) to Evidence Code section 1561, the DA could not have made the attestation set forth in subdivision (a)(3) that the subpoenaed records had been prepared in the ordinary course of business at or near the time of the event. And as section 1561 now stands, the DA is unable to comply with subdivision (a)(4) and (5)[2], and, thus, is not a custodian of the records sought." (*Id*. at p. 1045.)

St. Agnes' subpoena does not seek documents about the Doerksen entity. Instead, the document requests seek documents that are either produced by Santé, SHS and/or CMC, or related to the deposition of any witness for Santé, SHS and/or CMC. Thus, demands are targeted at documents that Doerksen has access to, but are not its own business records. Accordingly, Doerksen cannot serve as a custodian of records for any of the records associated with categories 1, 2 and 3, and is likely only to be a custodian of records as to their own work-product as to categories 4, 5 and 6. Thus, this is an independent reason to quash the subpoena.

4. Categories of the Subpoena Impose an Unreasonable Burden on Doerksen

A court "shall limit the scope of discovery if it determines that the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence." (Code Civ. Proc., § 2017.020, subd. (a).) Citing *Calcor Space Facility, Inc. v. Superior Court* (1997) 53 Cal.App.4th 216, Santé argues "[t]he burden rests upon the party seeking the discovery to provide evidence from which the court may determine these Conditions are met. (*Id*. at p. 223.)

Calcor is largely distinguishable. *Calcor* held the discovery code "implies a requirement such categories [of documents to be produced in response to a deposition subpoena] be reasonably particularized from the standpoint of the party who is subjected to the burden of producing the materials. Any other interpretation places too great a burden on the party on whom the demand is made." (*Id*. at p. 222.) The *Calcor* court then found that "a blanket demand … hardly constitutes 'reasonable'

[2] Evid. Code, § 1561, subd. (a)(4) The identity of the records, (a)(5) A description of the mode of preparation of the records.

particularity." (*Ibid*.) Because the subpoena could be read to simply require the producing party to produce everything in its possession which in any way related to the subject of the litigation, there was no indication that the categories bore any relation to the manner which the third party kept its records. "The burden is sought to be imposed on Calcor to search its extensive files, at many locations, to see what it can find to fit Thiem's definitions, instructions and categories." (*Ibid*.) *Calcor* found this improper and suggested that the subpoenaing party undertake discovery to ascertain what documents actually existed before attempting to obtain them from third parties. (*Ibid*.) Requests 1, 2 and 3 are reasonably particularized by *Calcor's* standards. Requests 4, 5 and 6 are not.

4. The Subpoena Seeks Confidential Documents Protected from Disclosure by a Protective Order

Santé, SHS, and CMC produced the documents sought by the subpoena pursuant to a protective order entered in the *Moffett* litigation. The protective order recognizes that discovery in *Moffett* would "likely involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting [the *Moffett* matter] would be warranted." (Gruzen Decl. ¶ 5, Ex. C.) As such, the *Moffett* protective order provides that both parties and non-parties could designate information produced in response to discovery as "Confidential." In response to subpoenas served in *Moffett*, Santé, SHS, and CMC produced information designated "Confidential," i.e. "Protected Material." (Gruzen Decl., ¶ 6.)

The *Moffett* protective order prohibits parties, including outside counsel, such as Doerksen, from disclosing "protected material" or using it for any purpose other than "prosecuting, defending, or attempting to settle" the *Moffett* matter. (Gruzen Decl., ¶ 5, Ex. C, ¶ 7.1.) Per the terms of the protective order, such disclosure may only be made if "ordered by the court or permitted in writing by the Designating Party." (*Id*. at ¶ 5, Ex. C, ¶ 7.2.) Santé and CMC do not consent to Doerksen's disclosure of its protected material produced pursuant to the *Moffett* protective order. There is no evidence that SHS has consented to the disclosure of its protected material. (*Id*. at ¶ 7.)

The *Moffett* protective order also provides a "Designating Party" a right to ensure its confidentiality interests are protected in the event "protected material" is subpoenaed in other litigation. (Gruzen Decl. ¶ 5, Ex. C, ¶ 8.) Santé and CMC invoke this provision to prevent its "Protected Material" from being produced by Doerksen in the instant matter.

Finally, the *Moffett* protective order requires the destruction of "all Protected Material" "within (60) sixty days after the final termination of [the *Moffett*] action." Id. at ¶ 5, Ex. C, ¶ 11. More than 60 days have passed since the jury verdict was entered in the *Moffett* case on February 23, 2016 and the judgment was entered on April 19, 2016. Hence, Doerksen would only continue to possess "Protected Material" produced by Santé, SHS, and CMC because of a limited exception allowing outside counsel to retain "an archival copy" for its records. (Gruzen Decl., ¶ 5, EX. C., ¶ 11.)

The protective order is evidence of an expectation of privacy in the documents produced by Santé, SHS and CMC. However, if items in those records are directly relevant to, and essential to the fair resolution of, St. Agnes' case, then those privacy rights would give way if there is a compelling and countervailing state interest. (*Lantz v. Superior Court* (1994) 28 Cal.App.4th 1839, 1853–1854.) St. Agnes has made no attempt to show a *compelling interest*. It has only a general interest in conduct that could be related the allegations of the complaint – as to documents and testimony that could be obtained directly from the authoring entities and witnesses. However, even when a compelling interest permits discovery of records otherwise protected by the right of privacy, the scope of disclosure must be narrowly circumscribed. (*Britt v. Superior Court of San Diego County* (1978) 20 Cal.3d 844, 855–864; *Life Technologies Corp. v. Superior Court* (2011) 197 Cal.App.4th 640, 652–653.) Until St. Agnes shows it cannot obtain the desired records or testimony from any other non-privileged source, it will not obtain this material from Doerksen.

Pursuant to California Rules of Court, rule 3.1312(a) and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: A.M. Simpson on 11/30/16
(Judge's initials) (Date)